

FILE COPY

RECORDING REQUESTED BY:

City of Richmond
Department of Public Works
2600 Barrett Avenue
P.O. Box 4046
Richmond, California 94804



CONTRA COSTA Co Recorder Office
STEPHEN L. WEIR, Clerk-Recorder
DOC- 2002-0203851-00

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Northern California
Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attention: Barbara J. Cook, P.E. Chief

Monday, JUN 10, 2002 09:59:45
FRE \$0.00

Ttl Pd \$0.00

Nbr-0000905497

lrc/R9/1-14

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION

(Civil Code section 1471(c))

A Portion of Seacliff Marina Site
Seacliff Drive
Contra Costa County

This Covenant and Agreement ("Covenant") is made by and between the City of Richmond (the "Covenantor"), the current owner of property situated in Richmond, County of Contra Costa, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the Property of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree pursuant to Civil Code section 1471(c) and H&SC section 25355.5 that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 38,589 square feet, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located within the right-of-way of Seacliff Drive between Canal Boulevard and Brickyard Cove Road in the area now generally bounded by the Harbor Channel on the south, the Port of Richmond Shipyard No. 3 on the east, the Point Potrero Hill on the north and the Brickyard Cove development on the west in the County of Contra Costa, State of California.

1.02. The Property is a portion of the Seacliff Marina site ("Site", Figure 1). The Site was used for shipbuilding, ship repair, ship scrapping, and metal recycling. Past activities have contaminated the soil at the Site. Contaminants detected in the soil included asbestos, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, total petroleum hydrocarbons and heavy metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, vanadium and zinc.). These contaminants are above the health based cleanup levels established for the Site.

1.03. The Site was remediated pursuant to a Remedial Action Plan prepared and approved pursuant to Chapter 6.8 of Division 20 of the Health and Safety Code. The Department circulated the Remedial Action Plan (RAP), which contains a summary of the Final Documentation of Recommended Remedial Cleanup Goals for Soils and Sediments Report, together with a negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Remedial Action

Plan and the negative declaration were approved by the Department on February 15, 1995. The RAP was implemented between April 21, 1998 and November 15, 1998. Contaminated soils remain on the Property at depths of three (3) to thirty-five (35) feet or more below ground surface. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including asbestos, polychlorinated biphenyls, polycyclic aromatic hydrocarbons, total petroleum hydrocarbons and heavy metals (antimony, arsenic, barium, beryllium, cadmium, chromium, cobalt, copper, lead, mercury, molybdenum, nickel, vanadium and zinc) remain in the soil on the Property beneath three (3) to thirty-five (35) feet or more of clean fill, the Department concluded that a deed restriction is required to restrict the use of the Property.

1.04. Based on the final Documentation of Recommended Remedial Cleanup Goals for Soils and Sediments Report, the Department concluded that the Property, as remediated, subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment. The Department also concluded that the Property does not present any risk that would require any other property, including the balance of the Seaclyff Drive right-of-way, to be restricted in its use and nothing in this Covenant limits the use of any property adjacent to the Property.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners: Pursuant to H&SC section 25355.5, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive owners of the Property are expressly bound hereby for the benefit of the

Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property.

3.04. Incorporation into Deeds and Leases: The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Restricted Property: The Owner shall provide notice to the Department no later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses: The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation

- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil below a depth of three (3) feet (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property that will disturb the soil below a depth of three (3) feet.

4.03. Prohibited Activities: The following activities shall not be conducted at the Restricted Property:

- (a) Raising of food (cattle, food crops).
- (b) Drilling for drinking water, oil, or gas without prior written approval by the Department.

4.04. Access for Department. The Department and its designees shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Permitted Uses. The Property may be used for any purpose that does not conflict with the prohibitions on use set forth in this Covenant including, without limitation, sidewalks, curbs, gutters and landscaping for Seacliff Drive.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. This Covenant shall be enforceable by the Department pursuant to Health & Safety Code Division 20, Chapter 6.5, Article 8 commencing with section 25180).

ARTICLE VI VARIANCE TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Contra Costa within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: 1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or 2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

City of Richmond
Department of Public Works
2600 Barrett Avenue
P.O. Box 4046
Richmond, California 94804

With a copy to:

City of Richmond
City Attorney's Office
2600 Barrett Avenue, 3rd Floor
Richmond, California 94804

To Department:

Department of Toxic Substances Control
Northern California - Coastal Cleanup Operations Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, P.E., Chief

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving

portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06. Statutory References. All statutory references include successor provisions.

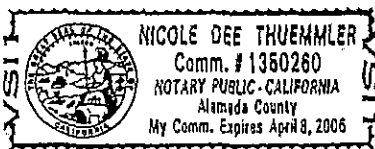
ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda } ss.

On 6/7/02 before me, Nicole Dee Thuemmler
(DATE) (NOTARY)
personally appeared Barbara J. Cook
SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nicole Dee Thuemmler
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER
- _____ TITLE(S)
- ☐ PARTNER(S)
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☒ OTHER: Govt Official

DESCRIPTION OF ATTACHED DOCUMENT

Covenant to Restrict Use of Property
TITLE OR TYPE OF DOCUMENT

11
NUMBER OF PAGES

6/7/02
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

OTHER

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: The City of Richmond

By: [Signature]
Title: MAYOR

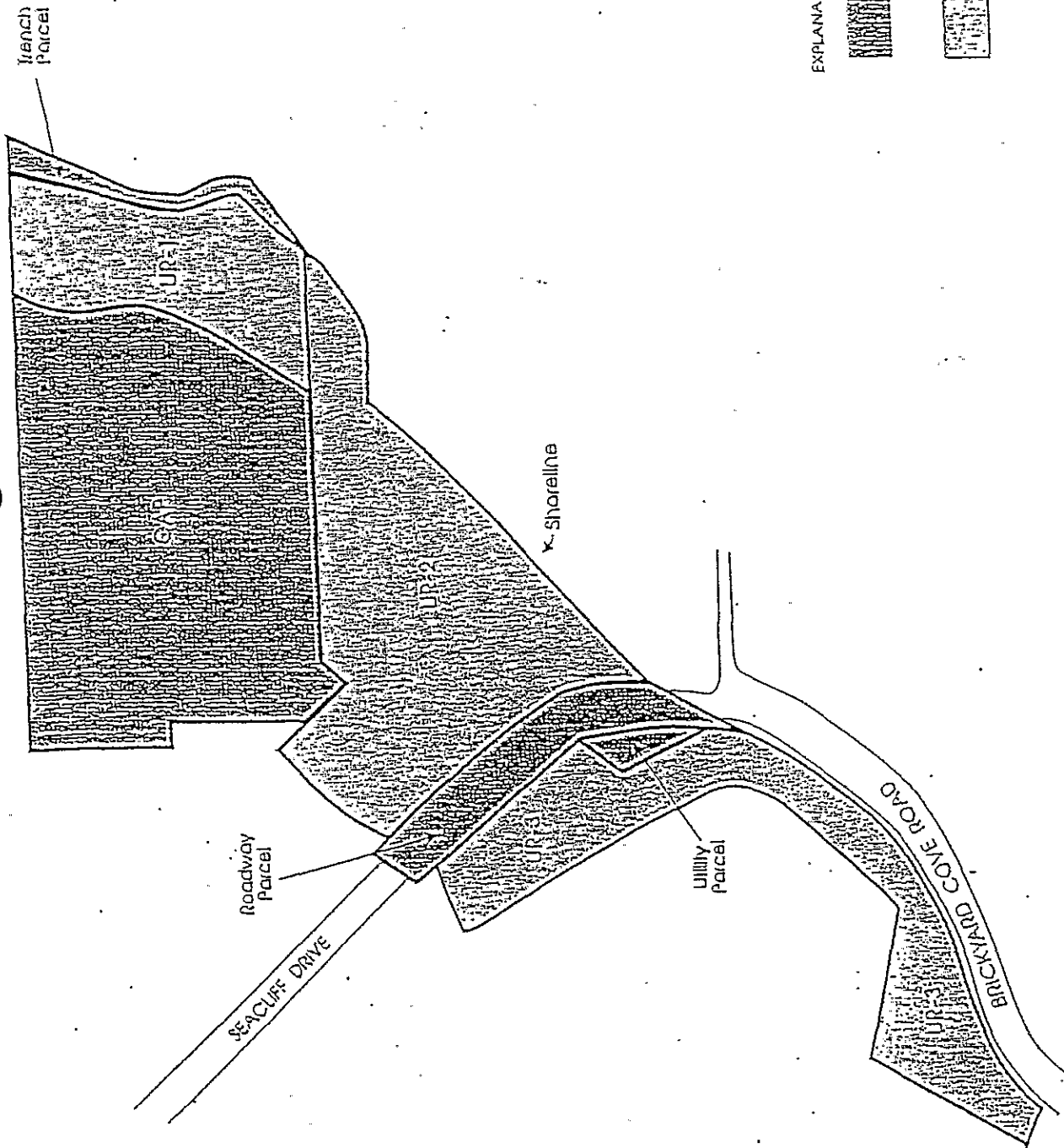
Date: May 20, 2002

Department of Toxic Substances Control

By: [Signature]
Barbara J. Cook, P.E. Chief,
Northern California - Coastal Cleanup Operations Branch

Date: 6/17/2002

EXHIBIT A



EXPLANATION:

- Restricted Area
- Unrestricted Area

FUTURE LAND USE

Seaciff Marina

Figure 1

Project 2014

Scale: 1" = ± 225'

December 1998



December 8, 1998
Job No. 81129

ROADWAY PARCEL

EXHIBIT "A"

All that certain real property situate in the City of Richmond, County of Contra Costa, State of California, described as follows:

BEGINNING at the most northerly corner of Parcel "C", as said parcel is shown on the Parcel Map of Subdivision MS 761-89, filed February 1, 1990, in Book 144 of Parcel Maps at Page 46, Contra Costa County Records, said point also lying on the southerly line of Seacliff Drive;

THENCE leaving said Point of Beginning along said southerly line of Seacliff Drive South $49^{\circ}45'00''$ West, 251.30 feet;

THENCE continuing along said southerly line along a tangent curve to the right, having a radius of 385.00 feet, through a central angle of $40^{\circ}03'20''$ for an arc length of 269.15 feet to a point on the northeasterly subdivision boundary line of Subdivision 3637, as said subdivision boundary line is shown on the map of Subdivision 3637, filed March 5, 1982, in Book 262 of Maps, at Page 43, Contra Costa County Records;

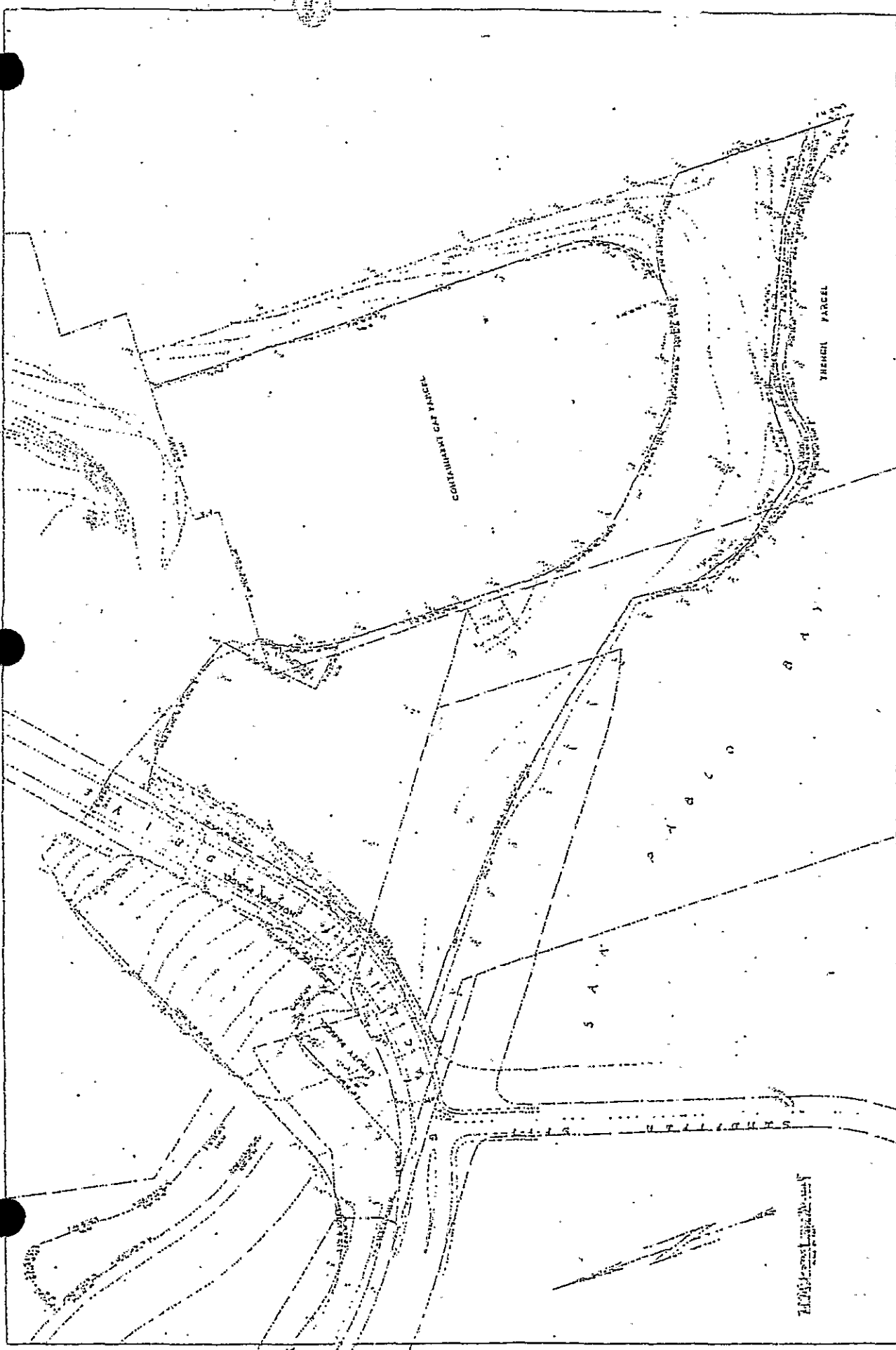
THENCE leaving said southerly line along said northeasterly line North $52^{\circ}57'15''$ West, 160.30 feet, to a point on the northerly line of Seacliff Drive;

THENCE leaving said northeasterly line along said northerly line along a curve to the left, having a radius of 315.00 feet, whose center bears North $23^{\circ}42'19''$ East, through a central angle of $63^{\circ}57'19''$ for an arc length of 351.61 feet;

THENCE continuing along said northerly line North $49^{\circ}45'00''$ East, 251.30 feet;

THENCE leaving said northerly line at right angles South $40^{\circ}15'00''$ East 70.00 feet to the Point of Beginning.

Containing an area of 38,589 square feet, more or less.

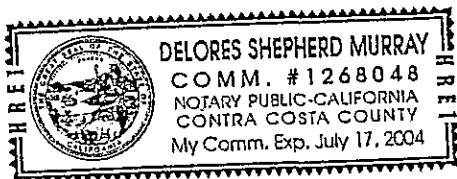


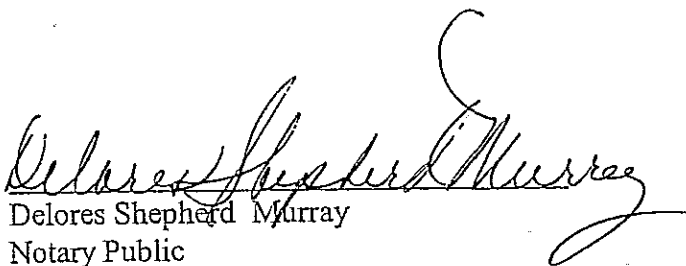
SEACLIFF PROPERTIES			Coastal Civil Engineering, Inc. 11100 S. 1st Avenue, Suite 100 Portland, Oregon 97206 Phone: (503) 253-1234
			Project No. 11100 Date: 11/11/11

STATE OF CALIFORNIA)
)ss
COUNTY OF CONTRA COSTA)

On May 21, 2002, before me, DELORES SHEPHERD MURRAY, a Notary Public in and for the State, personally appeared, IRMA L. ANDERSON, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacities, and that her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the same.

Witness my hand and official seal.




Delores Shepherd Murray
Notary Public

Irma L. Anderson signed this Covenant to Restrict Use of Property in her capacity as Mayor of the City of Richmond.

Document: Covenant to Restrict Use of Property
 Environmental Restriction
 (A Portion of Seacliff Marina Site, Seacliff Drive, Contra Costa County)

By: City of Richmond and the Department of Toxic Substances Control